1991), shall be used for the purpose of defining standard formats for ALI data exchange between basic local exchange carriers, ALI database providers, governing bodies and basic emergency service providers.

RULE 4 CCR 723-29-15. WAIVERS. The Commission may permit variance from these rules for good cause shown if it finds compliance to be impossible, impracticable, or unreasonable, and if such variance is not otherwise contrary to law.

RULE 4 CCR 723-29-16. INCORPORATION BY REFERENCE. References in these rules to the Recommended Formats for Data Exchange (NENA-02-001), to the Recommended Standard for Street Thoroughfare Abbreviations (NENA-02-002), and to Recommended Protocols for Data Exchange (NENA-02-003), are standards issued by the National Emergency Number Association and have been incorporated by reference in these rules. These standards may be found at NENA-02-001, revised as of June 1993, NENA-02-002, original as of September 1991, and NENA-02-003, original as of June 1993. References to NENA-02-001, 002, and 003 do not include later amendments to or editions of these standards. A certified copy of these standards which have been incorporated

by reference are maintained at the Public Utilities Commission, 1580 Logan Street, OL-2, Denver, Colorado 80203 and are available for inspection during normal business hours. Certified copies of the incorporated standards shall be provided at cost upon request. The Director of the Public Utilities Commission, or his designee, will provide information regarding how the incorporated standards may be obtained or examined. These incorporated standards may be examined at any state publications depository library.

1991), shall be used for the purpose of defining standard formats for ALI data exchange between basic local exchange carriers, ALI database providers, governing bodies and basic emergency service providers.

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COLORADO PUBLIC UTILITIES COMMISSION
TELEPHONE VERBAL REPORT OF 911 FAILURE/OUTAGE
4 CCR 723-29
(reporting pager number - 303-891-2428)

NAME OF COMPANY: _____ **NOTICE #**____

CALLER (NAME and ENTITY): _____

DATE:_____ **TIME:**_____ **CALLER PHONE #:** _____

MESSAGE RECEIVED BY:_____

EVENT DATA

LOCATION:_____

DATE: _____ **TIME (START):**_____ **TIME (END):**_____

DURATION OF FAILURE/OUTAGE: _____(HRS) _____(MIN)

EST. NO. OF POTENTIAL CUSTOMERS AFFECTED:_____

AGENCIES NOTIFIED: PSAP: ☐ **SHERIFF/POLICE:** ☐
AMBULANCE: ☐ **FIRE:** ☐ **OTHER:**_____ ☐

OTHER TELEPHONE COMPANIES NOTIFIED: Yes ☐ **No** ☐ **N/A** ☐
CONTINGENCY PLAN IMPLEMENTED?_____

_____

CAUSE

DETAILS:_____

_____

_____

SYSTEM FAILURE ☐ **OPERATOR ERROR** ☐
CABLE CUT ☐ **OTHER** _____

CO PUC EVALUATION

COMMENTS: _____

_____

_____ **DATE INVESTIGATED:** _____

WRITTEN REPORT RECEIVED: _____ **DATE:**_____

PROFESSIONAL ENGINEER:_____ **DATE:**_____

ORIGINAL TO FILES COPIES TO: W. WENDLING, G. KLUG ***Adopted 4/17/96***

COLORADO PUBLIC UTILITIES COMMISSION
WRITTEN REPORT OF 911 FAILURE/OUTAGE
4 CCR 723-29

In the event a 911 failure or outage exceeds the threshold time pursuant to Rule 11.8, 4 CCR 723-29, the responsible Basic Emergency Service Provider or the basic local exchange carrier shall prepare a written report to the Commission **within three business days** of such outage that contains the following information:

1. Name of the Company.
2. Name, title of the representative, address and telephone number of the representative preparing the report.
3. Date of this report.
4. Date and time of the failure/outage. Date and time when service was restored.
5. Duration of the outage in hours and minutes.
6. Location and extent of the outage.
7. Nature or cause of the outage (*e.g.*, cable cut, failure of a carrier system, etc.).
8. Estimate of the number of customers potentially affected by this outage.
9. Was a contingency plan on file? If so, was the plan implemented? Please describe what steps of the contingency were implemented.
10. To the extent known, did the 911 failure/outage impair the emergency response to a 911 call. (This information may have to be obtained from the PSAP/Authority Board responsible for receiving 911 calls affected by this failure/outage.)
11. Describe the corrective action taken to prevent such failures in the future, assuming corrective action can mitigate such failures (*e.g.*, marking of 911 circuits in the central office to alert telephone company staff of the special nature of these circuits).
12. The report must signed by the representative of the company filing the report.

Please send the original of this report to the Director of the Public Utilities Commission, Mr. Bruce N. Smith, at 1580 Logan Street, OL2, Denver, Colorado 80203, and a copy of this report to Mr. Warren Wendling, Chief Engineer, at 1580 Logan Street, OL1, Denver, Colorado 80203.

For PUC use: ORIGINAL TO FILES, COPY TO CHIEF ENGINEER ***Adopted 4/17/96***

(Decision No. C96-159)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED)
RULES REGARDING CERTIFICATION)
OF PROVIDERS OF LOCAL EXCHANGE) DOCKET NO. 95R-555T
TELECOMMUNICATIONS SERVICES.)

DECISION ADOPTING RULES

- -

Mailed Date: March 15, 1996
Adopted Date: March 7, 1996

- -

I. **BY THE COMMISSION:**

A. **Background and Procedural Matters**

1. This matter is before the Commission to consider adoption of rules regulating the authority to offer local exchange telecommunications services, in accordance with the requirements of House Bill No. 95-1335 ("HB 1335"), codified at §§ 40-15-501 *et seq.*, C.R.S.

B. In enacting HB 1335, the General Assembly determined that competition in the market for basic local exchange service is in the public interest. *See* § 40-15-501, C.R.S. Consistent with that policy goal, HB 1335 directs the Commission to encourage competition in the basic local exchange market by adoption and implementation of appropriate regulatory mechanisms to replace, eventually, the existing regulatory framework. Specifically, the Commission must:

1. establish standards for basic telephone service;

2. establish mechanisms to advance the goal of universal service, i.e., provision of basic telephone service to all at just and reasonable rates;

3. consider the necessity for specific mechanisms to advance goals relating to universal access to advanced telecommunications services; and

4. resolve other issues relating to implementation of competition in the local exchange market.

C. The Commission has the responsibility to open local exchange telecommunications markets to competition and to structure telecommunications regulation in a manner that achieves a transition to a fully competitive telecommunications market. To

that end, the Commission must establish the terms and conditions under which competition will occur,[1] including the process by which a potential provider of basic local exchange service applies for a certificate of public convenience and necessity ("CPCN"), which is a precondition to providing service.[2]

D. HB 1335 contains an equally important, and somewhat counterbalancing, public policy directive which the Commission must implement: structure the transition to competition to protect basic service, which is

> the availability of high quality, minimum elements of telecommunications service, as defined by the Commission, at just, reasonable, and affordable rates to all people of the state of Colorado.

Section 40-15-502(2), C.R.S.

E. To realize these public policy goals, the Commission may use a variety of mechanisms including, but not limited to, "more active regulation of one provider than another or the imposition of geographic limits or other conditions on the authority granted to a provider." Section 40-15-503(2)(a), C.R.S. In addition, the Commission must consider the differences between the economic conditions of urban and rural areas of the state. *Id.* Further, the Commission must adopt rules which allow simplified regulatory treatment for basic local exchange providers "that serve only rural exchanges of ten thousand or fewer access lines." Section 40-15-503(2)(d), C.R.S.

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[1] *See* §§ 40-15-502(1) and (3)(b), C.R.S.

[2] *See* § 40-15-503(2)(e), C.R.S.

F. The Working Group established pursuant to §§ 40-15-503 and 40-15-504, C.R.S., has recommended proposed rules for consideration by the Commission to implement HB 1335. These proposals are found in the Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated November 30, 1995 (the "November report"), and in the Supplemental Report of the HB 1335 Telecommunications Working Group to the Colorado Public Utilities Commission, dated December 20, 1995 (the "December report").

G. As part of the November report, the Working Group transmitted to the Commission proposed rules regulating the authority to offer local exchange telecommunications services.[3] These proposed rules were attached to our notice of proposed rulemaking in this docket, Decision No. C95-1172, dated November 29, 1995.

H. In accordance with our notice of proposed rulemaking, a hearing on these proposed rules was held on January 12, 1996.[4] The following parties submitted written and oral comments for our consideration: AT&T Communications of the Mountain States, Inc. ("AT&T"); AT&T Wireless Services ("AT&T Wireless"); Colorado Independent Telephone Association ("CITA"); Farmers Telephone Company, *et al.*; ICG Access Services, Inc., and Teleport Denver

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[3] November report at Appendix G, discussed in the November report at pp. 76-86.

[4] All oral presentations were made at the public hearing held on January 12, 1996. In accordance with the notice of proposed rulemaking, the Commission was available to receive public comment on January 25 and 26, 1996. However, no member of the public appeared on either of those dates to present comment.

Ltd. ("ICG"); MCI Telecommunications Corporation ("MCI"); MFS Intelenet of Colorado, Inc. ("MFS"); Office of Consumer Counsel ("OCC"); staff of the Commission ("Staff"); TCI Communications, Inc., *et al.* ("TCI"); University of Colorado and Colorado State University ("Universities"); U S WEST Communications, Inc. ("USWC"); and Charles Wimber.

I. In addition to the written comments filed with the Commission and the oral comments made at the hearing, the Commission took administrative notice of, and has considered and relied upon, the November report, the December report, and the Public Outreach Meetings Report ("Outreach Report") dated December 20, 1995.[5] These reports are filed in Docket No. 95M-560T, the repository docket regarding implementation of §§ 40-15-105 *et seq.*, C.R.S.

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[5] This report summarizes the comments (both oral and written) received during 16 public outreach meetings which the Commission held throughout the state in September and October, 1995, to solicit input on competition to provide local telephone service and on a proposed "Telecommunications Consumers Bill of Rights" drafted by the Commission. Meetings were held in Breckenridge, Steamboat Springs, Glenwood Springs, Colorado Springs, Trinidad, La Junta, Lamar, Pueblo, Grand Junction, Montrose, Cortez, Durango, Alamosa, Fort Collins, Denver, and Fort Morgan. Participants represented a diverse cross-section of the public.

As stated in the report,

> An overriding concern expressed at the meetings was the question of whether statewide competition in the local telephone market is a realistic expectation, how long will it take competition to reach less densely-populated areas of the state, and how will the PUC manage the transition period?

Outreach Report at 4.

II. **DISCUSSION.**

A. **Consensus and "Substantial Deference"**

1. The rules proposed by the Working Group were not wholly "consensus" rules. Subsections 40-15-503(1) and (2)(a), C.R.S., require that we give "substantial deference" to the proposals submitted by the Working Group with respect to issues on which the Working Group reports that it has reached consensus on or before January 1, 1996.

2. The statute does not define "substantial deference." Thus, in the course of the HB 1335-related rulemakings, we must develop and apply our understanding of "substantial deference." To do so, we have examined the concept of "substantial deference" within the context of the public policies articulated by the General Assembly, as well as in the context of the Commission's constitutional and statutory authorities and responsibilities.

3. In implementing our understanding of "substantial deference," we take the following into consideration:[6] our overarching obligation to protect the public interest, even as we shepherd the transition into a fully competitive telecommunications marketplace; the consistency of the proposed consensus rule with all provisions of § 40-15-501 *et seq.*, C.R.S., and other applicable statutes; the consistency of the proposed consensus rule with existing Commission rules; the ability of the public and of regulated entities to understand the proposed consensus rule and

[6] This listing is not a definitive statement of the considerations relied upon by the Commission.

the processes described therein; the ability of the Commission to enforce the proposed consensus rule; the ability of the proposed consensus rule to accomplish or to assist in the transition to a fully competitive telecommunications environment while assuring the availability of basic service at just, reasonable, and affordable rates to all people of Colorado; and the fairness of the proposed consensus rule to all telecommunications service providers, existing and prospective. We examine each proposed consensus rule in light of these considerations.

4. We are of the opinion that we may make changes to a proposed consensus rule where, after full consideration of the record and the factors outlined above, we deem it necessary. Because the General Assembly has required us to attach significant weight to the opinions of the Working Group, the rationale supporting any decision by this Commission to reject a consensus rule must be clearly articulated.

B. **Need for Rules Regulating the Authority to Provide Local Exchange Service.** The parties in this proceeding have expressed unanimous recognition that these Rules are necessary. We agree. The inability of the parties to reach consensus on some of the Rules does not negate this agreement. Rather, the disagreements were the result of differences of opinion on specific points.

1. First, the Commission must have sufficient information about a provider or applicant to investigate fully that person's ability to provide local exchange telecommunications service and to serve the public interest.

2. Second, the Commission must have sufficient information to support a finding that, if a CPCN is granted, the applicant: is willing and able to provide service consistent with applicable statutes and rules, including the quality of service rules; will provide the service as promised so that end-users and other providers are protected; and will enhance the universal availability of basic local exchange service.

3. Third, each applicant must have adequate notice and sufficient information regarding its obligations (*e.g.*, what information must be supplied as part of an application and the obligations and responsibilities assumed if a CPCN is granted). Fourth, and certainly not least important, the process must be clearly articulated, must be competitively neutral (*e.g.*, favor neither large nor small applicants, favor neither incumbent providers nor applicants), and must not act as a barrier to competition. These Rules meet these objectives.

C. **Content of Rules 1 through 5.**[7]

1. The Working Group was able to reach consensus regarding the majority of issues set forth in Rules 1 through 5. The Working Group failed to reach consensus on these points: certain definitions (proposed Rules 3.11 and 3.12); the information to be provided by an applicant concerning its compliance history

[7] We have determined that proposed rule 1: basis, purpose, and statutory authority, is not a rule. Thus, although we retain the statement, it is not numbered as a rule. As a result, the rules we promulgate have been renumbered from the proposed rules. We use the final rule numbers in our discussion, making reference to the proposed rule numbers where necessary for clarity.

(proposed Rule 5.8); and the statements to be made by an applicant as part of the application (proposed Rules 5.19 and 5.21).

2. Consistent with our discussion above concerning "substantial deference," we will make modifications, corrections, conforming and other changes to the consensus rules which we deem necessary. In addition, where no Working Group consensus was reported, we adopt Rules which are, in our opinion, necessary and appropriate to carry out our constitutional and statutory responsibilities.

3. **Proposal of the Universities.**

a. The Universities proposed a new option for Rule 1: Applicability. The Universities argued that the requirements of these Rules should not apply to institutions of higher education[8] which own or lease and operate telecommunications systems for the purpose of providing intercommunications within those systems and local exchange access services to administration, faculty, staff, government and/or university-affiliated non-profit corporation employees at their work locations, and to students resident in institution-affiliated housing.

b. The Universities rely on this Commission's April 11, 1984, Decision No. R84-428, in support of their position. In that decision, the Commission determined that the Colorado State

[8] Section 24-113-102(2), C.R.S. (1988), defines an "institution of higher education" as "a state-supported college, university, or community college."

University ("CSU") telephone system did not constitute public utility service.[9]

c. In the discussion section of Decision No. C84-428, the administrative law judge stated:

> CSU will not serve non-university entities such as the three private businesses located on campus or the Federal government agencies. Mountain Bell will continue to serve these businesses and agencies. CSU, by providing private service as above described, is not a public utility since it is not offering service to the general public indiscriminately.
>
> * * *
>
> The next question presented in this case is whether CSU, by its proposed telephone system, is a reseller of telephone service.
>
> * * *
>
> The Commission has . . . in Decisions No. C82-1928 and C82-1925 defined "resale" as an entity charging more or less than the certificated supplier of utility service. The proposed CSU service does not constitute resale under the above definitions since CSU will not increase or reduce the cost of service. Consequently, CSU will not be a reseller of intrastate telecommunications services.

Decision No. R84-428 at 5.

d. Clearly, with the advent of HB 1335, the local exchange telecommunications service market in Colorado has changed radically. For example, in Docket No. 95R-557T, *In the Matter of Proposed Rules Regarding Implementation of §§ 40-15-101, et seq. -- Resale of Regulated Telecommunications Services*, there are proposals to change the definition of "resale" that the Commission adopted in 1982. Further, HB 1335 speaks in terms of "multiple

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[9] Decision No. R84-428 is expressly limited in its applicability to the telephone system of CSU as described in that decision.

providers of local exchange service"[10] and clearly contemplates that all local exchange service providers need not be designated by the Commission as providers of last resort.[11] The obligation of a local exchange service provider to serve all members of the public indiscriminately, and thus its status as a public utility as defined in Decision No. R84-428, has clearly been affected by the enactment of HB 1335.

e. For the purpose of this rulemaking proceeding, we reject the argument of the Universities that institutions of higher learning should be exempted from the application of these Rules. In light of the evolving responsibilities of local exchange service providers under HB 1335,[12] the broad statutory definition of "public utility" (*see* § 40-1-103, C.R.S.[13]), and the inclusive definition of "person" (*see* § 40-1-102(5), C.R.S.[14]), we find that

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[10] Section 40-15-501(3)(c), C.R.S.

[11] Section 40-15-502(6), C.R.S.

[12] "Wise public policy relating to the telecommunications industry and the other crucial services it provides is in the interest of Colorado and its citizens[.]" Section 40-15-501(2)(a), C.R.S.

"A provider that offers basic local exchange service through use of its own facilities or on a resale basis may be qualified as a provider of last resort, ... Resale shall be made available on a nondiscriminatory basis[.]" Section 40-15-502(5)(b), C.R.S.

[13] As relevant here, this section defines a "public utility" as "every common carrier, ... telephone corporation, telegraph corporation, ... person, or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest[.]" This definition is subject to exemptions found in § 40-1-103(1)(b).

[14] This section defines "person" as "any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity."

the record in this proceeding does not support the adoption of the Universities' proposed language.

f. We also find that the Universities' proposed language may create an exemption from the application of these Rules that is overly broad. We believe that the issue raised by the Universities is more appropriately considered in an adjudicatory proceeding where the specific facts pertaining to those entities can be addressed.

4. Definition of "Controlled Telecommunications Service."

a. Rule 2.5 contains a new definition not found in the proposed consensus rules: "controlled telecommunications service." The parties were unable to reach consensus with respect to a definition which adequately describes all telecommunications services which are subject to regulation by any governmental entity within the United States or by any governmental entity outside the United States. As a result, believing a broad definition is necessary, we have developed the definition set forth in Rule 2.5.

b. We find, first, that the language "electronic, optical, or any other means of transmission of information" is intended to, and does, capture all technologies used to transmit information. We recognize that this definition is broader than the definition of "telecommunications service" found at § 40-15-102(29), C.R.S. Our purpose is not to assert jurisdiction over all telecommunications products and services which might fall within the ambit of "electronic, optical, or any other means of

transmission of information." Rather, our purpose is to secure relevant and valuable information to assist us in evaluating an applicant. For this purpose, and for this purpose alone, the broader definition is appropriate and proper.

c. We find, second, that this new definition incorporates all telecommunications services which are regulated by any governmental entity, including all federal, state, and local jurisdictions within the United States and all jurisdictions outside the United States.

d. We find, third, that this new definition aids the Commission in our work of fostering a fully competitive telecommunications environment and managing the transition to that fully competitive environment. It is important for us to know the experience of an applicant in any regulated telecommunications environment. This will assist the Commission in evaluating an applicant's fitness and, to a degree, an applicant's qualifications to provide quality telecommunications service. In addition, it will assist the Commission in obtaining valuable information about the applicant's performance history in any jurisdiction (including Colorado) in which it has provided or is providing telecommunications service. (*See, e.g.*, discussion of Rule 4, below.)

e. The Commission did not adopt the definition of "jurisdictional telecommunications service" found in proposed Rule 3.11 because it was not sufficiently inclusive. As presented,

it did not include governmental authorities outside the United States.

f. We did not accept the definition of "regulated telecommunications service" found in proposed Rule 3.12. The term "regulated telecommunications service" is defined in § 40-15-102(24), C.R.S. Statutory definitions are applicable and controlling.[15] As a result, we need not duplicate in these Rules the statutory definitions.

g. For these reasons, among others, the Commission adopts Rule 2.5; the definition of "controlled telecommunications service."

5. **Rule 4.**

a. This Rule describes the required contents of an application for a certificate to provide local exchange telecommunications services ("certificate").[16] At a minimum, this Rule serves these important functions: informs applicants of the data they must provide; informs applicants of their obligations upon certification; and provides notice to applicants of the possible consequences of submitting an application which contains false information or misrepresentations.

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[15] Utilities must refer to the statute to be certain that they understand the definitions of words and phrases used in these rules. This is the same procedure that any utility should employ in any situation involving Commission rules.

[16] As adopted, the rules state that a certificate of public convenience and necessity consists of two pieces: a certificate (rule 4) and an operating authority (rules 6 and 7). These may be obtained in one proceeding (by application, see rule 10) or may be obtained in separate proceedings. Rule 7 pertains to obtaining an operating authority in an area served by a basic local exchange provider who only serves exchanges of 10,000 or fewer access lines; and rule 6 pertains to all other areas.

b. The Commission changed the format of Rule 4. As promulgated, Rule 4 is easier to read and clearer than proposed Rule 5. References in this Decision are to the numbered provisions of Rule 4. We discuss our changes or modifications to the provisions of the consensus rule below.

c. The Commission modified consensus language in *Rule 4.1.4* (proposed Rule 5.1.3) by adding a requirement that the applicant inform the Commission of the date of creation of the partnership, limited liability corporation, or other form of business organization. This parallels the requirement that a corporation inform the Commission of the date of its creation (Rule 4.1.2). The information will assist the Commission in assessing the fitness of the business entity by providing information about the length of time the entity has been in existence. This additional requirement, while not burdensome, yields important information to the Commission for the purpose of certification to serve Coloradans.

d. The Commission modified consensus language in *Rule 4.1.6* (proposed Rule 5.3). Proposed Rule 5.3 required a description of the extent to which an applicant or an affiliated person holds a CPCN or an operating authority which duplicates the CPCN sought. The Commission eliminated the limiting language: "duplicating in any respect the authority requested by applicant." This quoted language is a vestige of regulated monopoly and should not appear in rules intended to apply during and after the transition to a fully competitive telecommunications environment.

Further, if the Commission is to promote competition, it must understand and have information about market power. Knowing the area or areas which an applicant or an affiliated person has authority to serve will assist the Commission in evaluating the applicant and its market power or potential market power.

e. *Rule 4.1.11* (proposed Rule 5.8) is the Rule which requires an applicant to supply information concerning judicial and administrative orders which pertain to the applicant's provision of local exchange telecommunications services or other controlled telecommunications services. As proposed, Rule 5.8 was not a consensus rule. Consistent with our discussion of "substantial deference," we considered the various arguments advanced by commenters against the backdrop of the Commission's HB 1335 obligations and determined the scope of Rule 4.1.11.

f. Rule 5.1.11 information describes judicial and administrative orders[17] which pertain to specific regulatory actions;[18] thus, the requested data relate to actions taken in Colorado and elsewhere and supply information, at least, about an applicant's fitness to operate and an applicant's performance history in the provision of telecommunications services. In addition, because the data required are generally limited to final judicial and administrative orders, they are likely to be reliable

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[17] The orders are to be provided upon request of the Commission but need not be submitted as part of the application.

[18] The categories include, for example, assessment of civil penalties and of criminal penalties; refunds, reparations, and corrective actions; and limitations, including decertifications, on applicant's authority to operate or to provide a controlled telecommunications service.

and free from mere allegations which have not been investigated or verified in some manner. This type of information is necessary for the protection of the public against abusive service providers and should be provided by the person to whom they are most readily available: the applicant.

g. *Rule 4.1.11.1* also requires an applicant in a specific situation to provide information concerning telecommunications operations outside the United States. The data are the same as those required for telecommunications operations within the United States and are important data for the reasons stated above. For these reasons, among others, we adopt Rule 4.1.11 and Rule 4.1.11.1.

h. The Commission modified the consensus language in *Rule 4.1.12* (proposed Rule 5.9). The Commission determined that the geographic area to be served by an applicant should be described as precisely as possible. Thus, the description should be the legal description, stated in metes and bounds. With the advent of competition, the Commission will be called upon to mediate, to arbitrate and to adjudicate disputes regarding customer service areas. In addition, there may well be an increase in the transfer or encumbrance of certificates. In these cases, a precise understanding of service areas will be necessary. Further, the description should be easily understood by the Commission and by any person reviewing the application. As a result, the Commission deleted the consensus language "or other similarly precise manner"

and added the requirement that applicant provide a map displaying the service area.

i. We have added a new *Rule 4.1.20.*

(1) Pursuant to this Rule and as part of its application, an applicant must provide a statement that, by filing the application, it agrees: first, to answer all questions propounded by the Commission or authorized members of its staff concerning the application, the subject matter of the application, or any information supplied in support of the application; and, second, to permit the Commission or authorized members of its staff to inspect the applicant's books and records as part of the investigation into the application, the subject matter of the application, or any information supplied in support of the application.

(2) This area was not addressed in the consensus rule submitted by the Working Group. The issue did, however, receive consider-able attention during the hearings held in this rulemaking. The participants at the hearing acknowledged that the Commission must be able to investigate applications and applicants, to obtain information from applicants, and to satisfy itself that it has the information the Commission considers necessary to make a decision on the application. The parties felt that the Commission should be able to obtain this information from any applicant, whether or not it is a "public utility" as defined in § 40-1-103, C.R.S.

(3) The parties also expressed the preference for prompt Commission action on applications. To this end, they preferred rules which require an applicant to supply, in its application, data sufficient to permit the Commission and interested parties to understand the authority sought and to evaluate the application without the necessity of setting the application for hearing and engaging in discovery to obtain information. It was their expressed hope that full disclosure in the application would lessen the chances of an application's being opposed or contested. Assuming the required information is provided with an application and is complete, the Commission would be able to reach a decision on an uncontested application without setting the application for hearing. The parties stated that, again assuming an application was unopposed, prompt Commission action on an application would be beneficial to the applicant and to the public.

(4) Being aware that information submitted with the application might need to be clarified and that the Commission might need to investigate an application to satisfy itself, the parties suggested that the Commission could use its authority pursuant to §§ 40-3-110 and 40-6-106, C.R.S., to obtain information from applicants. Some went so far as to state that submission of an application renders an applicant subject to our jurisdiction as a "public utility." We are not convinced that the cited statutory provisions allow us to obtain data from all applicants.

(5) The Commission needs sufficient data (a) to be certain of an applicant's ability to provide local exchange telecommunications service and to serve the public interest and (b) to support a Commission finding that the applicant is able and willing to provide service consistent with applicable statutes and Commission rules, will provide the service as promised so that end-users and other providers are protected, and will enhance the universal availability of basic local exchange service. We can obtain this information several ways: through our authority found in §§ 40-3-110 and 40-6-106, through discovery in administrative proceedings, and through the cooperation of the person from whom the information is requested.

(6) A prerequisite found in the cited statutes is: the person from whom the Commission seeks information, or to whose books and records the Commission seeks access, must be a "public utility" (*see* definition of public utility in footnote 13, above). Applicants who are not certificated in Colorado, and therefore not public utilities, may seek authority to offer local exchange telecommunications services. Sections 40-3-110 and 40-6-106 appear not to apply to those applicants.[19]

(7) As a result, absent an agreement such as that found in Rule 4.1.20, it seems possible that the Commission could not obtain information from applicants who are not public

[19] As relevant to this decision, these sections would apply to a person who holds a certificate of public convenience and necessity, a certificate to provide local exchange telecommunications services, an operating authority, or any combination of these.